

**Understanding the Protections of Fair  
Housing & Landlord-Tenant Laws for  
Persons with Disabilities**

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# Relationship of Fair Housing Laws to California Landlord-Tenant Laws

- California Landlord-Tenant Laws define the rights and responsibilities of landlords and tenants in residential dwellings
- Federal & State Fair Housing Laws provide protections for people with disabilities in housing to ensure equal opportunity & prevent discrimination

# Key Areas of Concern

- Application and tenant selection process
- Rental/Lease agreement provisions
- Reasonable Accommodation
- Issues during the tenancy
- Termination of tenancies including lease violations and emergencies
- Confidentiality

# Federal & State Fair Housing Laws

## **Fair Housing Amendments Act of 1988:**

Prohibits discrimination in housing based on a person's race, color, religion, sex, national origin, disability or familial status

## **California Fair Employment & Housing Act:**

all of the above bases plus: marital status, ancestry, sexual orientation and source of income

## **Federal & State Fair Housing Laws Prohibitions Specific to Disability**

- **Discrimination in sale/ rental or to “otherwise make unavailable” or deny;**
- **Refusal/failure to make reasonable accommodations;**
- **Refusal/failure to permit reasonable modifications;**
- **Failure to design/ construct multi-family dwellings according to accessibility rules**

# What is “Fair” in Fair Housing?

race, color, religion,  
sex, national origin,  
family status and  
sexual orientation

vs.

Mental  
and  
Physical  
Disability

Must treat  
everyone the  
same; no special  
treatment

Must treat  
everyone the  
same, **UNLESS**  
that would  
effectively bar  
access

# Definition of Disability

- \* A physical or mental impairment that limits one or more major life activities;**

Makes that activity difficult

Major Life Activity includes: mental, physical and social activities, as well as working

Examples: depression, alcoholism, schizophrenia, blindness

**OR**

- \*A record of such an impairment;**

**OR**

- \*Being regarded as having such an impairment.**

## Substance Abuse/Alcohol Use

- Current users of illegal controlled substances are NOT protected by the law;
- People in recovery for substance abuse are protected;
- Alcohol is not illegal so people who use alcohol/ alcoholics are protected by fair housing laws.

# Direct Threat Exception

Someone who is a direct threat to the health and safety of others or property is NOT protected by fair housing laws:

- imminent threat but don't have to wait for actual harm
- objective evidence, not stereotypes & fears
- cannot be “stale”
- provider must attempt a reasonable accommodation, unless he can show that no reasonable accommodation could have eliminated the threat

# Housing Applicant Screening & Selection Process

- Landlord must follow the same application, review and selection process for everyone
- Exception: Some housing/units based on funding sources & specifically reserved for persons with disabilities may permit a different process
- Exception: An individual with a disability may request reasonable accommodation in any or all aspects of the application/selection process

# Specific Inquiries

## Permissible

- Tenant history, if any
- Ability to pay rent & source
- Ability to comply with lease
- Criminal convictions
- Supportive housing programs - supportive services inquiries permissible but generally best practice is to separate this process from eligibility

## Impermissible

- Questions regarding disability based on source of income
- Personal lifestyle information that is unrelated to being able to comply with lease
- Arrest records are not determinative
- If housing for persons with disabilities, inquiries seeking specific/detailed info re nature and/or severity of disability

# Reasonable Accommodation

Housing providers have an affirmative duty to provide flexibility in rules, policies, practices and procedures when it may be necessary to making housing available to a person with a disability.

# Reasonable Accommodation: Key Concepts

- **Purpose** : overcome a barrier to housing - - a barrier because of the disability
- **When** : any time – as a housing applicant, resident and even during an eviction process
- **Number** : there is no limit to the number of requests
- **Timing** : the landlord's delay in responding to the request may be considered a denial
- **Costs** : housing provider can be expected to pay for reasonable cost associated with providing the RA and cannot charge tenant

# Reasonable Accommodation Examples

- Accepting alternative references for person who has no tenant history
- Waiving the “three times the rent” rule with a family guarantor
- Flexibility in the rent payment due date because of delay in receipt of disability benefits/illness/hospitalization
- Providing a reserved handicapped parking space, waiving “first come” rule
- Waiving the “no pets” rule for an emotional support/assistive animal
- Care giver exceptions
- Delaying or waiving an eviction if the lease violation was due to the disability

# Reasonable Accommodation Analysis

- Does the person meet the definition of “disability?”
- Is the accommodation requested necessary to provide the person with equal access to the dwelling/use & enjoy the dwelling?
- Will granting the accommodation create an undue financial or administrative burden?
- Will granting the accommodation undermine the fundamental purpose of the program?

\*\* This is a case by case analysis based on the facts of the request.

# Requesting Reasonable Accommodation

- Decide when to make the request
- Put the request in writing (date the letter)
- Explain why you need the accommodation
- Include verification of need from a medical/mental health provider
- Request a written response within a reasonable but short amount of time (7 – 10 days)
- Include reliable contact information for landlord follow-up
- If mailing, send certified so you have evidence of receipt

## What If The Request for Reasonable Accommodation Is Denied?

- Understand the basis of the denial
- Does the landlord need any additional information that will be persuasive?
- Assert the landlord's obligation to engage in the "interactive process" (California law)
- Propose an alternative accommodation that may work (almost) as well
- Seek a legal remedy – file administrative complaint with DFEH – CA enforcement agency

# Reasonable Modifications

- A physical/structural change necessary because of disability
- The requested modification will provide equal opportunity to use and enjoy the dwelling
- Follow the procedure outlined for making a written request for RA
- Tenant pays for modification unless landlord voluntarily agrees to do so OR it's a federally funded program
- Local government may have funds for modifications
- Requirement to restore premises to original condition unless doing so problematic/not possible

# Termination of Tenancy

- State landlord-tenant law applies; local rent control laws (requiring good cause) may apply
- Most common reasons for eviction:
  - Non-payment of rent
  - Conduct violation
- If the basis of the eviction is not related to disability, fair housing laws will NOT help
- Is reasonable accommodation possible?
  - non-payment (illness/ hospitalization – payment plan)
  - conduct violation (disability related – mitigation?)
  - time to move – dismiss eviction – preserve record

# Confidentiality

- Landlord & manager are not to release information about tenant to anyone
- Landlord & manager may not discuss any RA's
- Housing programs with supportive services must separate tenancy files from services component
- No information sharing between property management & services providers (unless written consent of individual)

## Additional Resources

- Landlord-Tenant Rights and Responsibilities –  
*California Tenants* @ [www.dca.ca.gov](http://www.dca.ca.gov)
- California Fair Housing Laws –  
- information, on-line filing of complaints of fair housing violations @ [www.dfeh.ca.gov](http://www.dfeh.ca.gov)
- HUD DOJ Joint Statement on Reasonable Accommodation  
[www.hud.gov/offices/fheo/library/huddojstatement.pdf](http://www.hud.gov/offices/fheo/library/huddojstatement.pdf)
- HUD DOJ Joint Statement on Reasonable Modification  
[www.hud.gov/.../reasonable\\_modifications\\_mar08.pdf](http://www.hud.gov/.../reasonable_modifications_mar08.pdf)